# RECENT CASES.

ATTACHMENT—ALIAS WRIT.—DYE ET AL. V. CRARY ET AL., 78 PAC. 533 (N. M.).—*Held*, that, there being no statutory authority for the issuance of an *alias* writ of attachment, such a writ gives the court no jurisdiction over property levied on by virtue of it.

It is a well settled principle that, attachment being in derogation of common law, statutes in connection therewith must be strictly construed in favor of the one against whom the proceeding is employed. *Penoyer v. Kelsey*, 150 N. Y. 77; *Ritchie v. Sayers*, 100 Fed. 520. But it is also true that a court should not push the strict construction so far as to leave the creditor remediless. *Taylor v. Ricards*, 9 Ark. 378; *Rawles v. Hoare*, 61 Barb. 266. In a few jurisdictions even the general principle is denied. *Force v. Hubbard*, 26 Ga. 289; *Runyan v. Morgan*, 7 Humph. 210. It would seem that with this conflict, this particular point, which might well come in the exception above, ought to be decided more upon general justice than strictly under the broad rule. And it is so held in most jurisdictions. *Majarrietta v. Saenz*, 80 N. Y. 547; *Elliot v. Stevens*, 10 Iowa 418. But other jurisdictions cling to the other holding. *Pack v. American Trust, etc., Bank*, 172 Ill. 192; *Watson v. Noblett*, 65 N. J. L. 506.

BANKRUPTCY—DISCHARGE—EFFECT OF AMENDMENT OF 1903.—IN RE NEELEY, 12 AM. B. R. 407.—*Held*, that the amendment of 1903 to Sec. 14b, Bankruptcy Act of 1898, which forbids a discharge if the bankrupt has been granted a discharge in voluntary proceedings within six years, is not retroactive, but that a new condition of discharge was fixed, in case of a petition of bankruptcy filed after passage of the amendment.

There is no constitutional right to a discharge in bankruptcy, and regulations changing the conditions upon which discharge will be granted are not unconstitutional. *In re Peterson*, 10 Am. B. R. 355. A statute is not necessarily retroactive because its operation in a given case may depend upon an occurrence anterior to its passage. *Endlich Inter. Stat.*, Sec. 280. Under a state bankruptcy law a provision similar to the amendment here considered was held not to be retroactive. *Eastman et al v. Hillard*, 7 Metc. 420. To this effect have been the decisions occurring under the previous national bankruptcy acts. *In re Gifford*, 16 N. B. R. 135; *In re Griffiths*, 10 N. B. R. 456. *Contra*, *In re Sheldon*, 8 Ben. 67. In construing another section of the amendment of 1903, which forbids a discharge if the applicant has obtained property on credit from any person upon a materially false statement in writing, it was held that the statute was not retroactive, but that it merely set forth a condition precedent to discharge. *In re Scott*, 126 Fed. 981; *In re Peterson, supra*. The case of *In re Carleton*, 131 Fed. 146, is directly in point, and sustains the holding in the present case.

CARRIERS—PASSENGER TICKETS—STATUTE OF LIMITATIONS.—CASSIANO V. GALVESTON, H. & S. A. R. Co., 82 S. W. 806 (TEX.).—Where a passenger presents a railroad ticket, unlimited as to time, but purchased fourteen years

before, *held*, that, as the statute of limitations ran from the date of issue, the person is a trespasser and can be ejected from the train.

Undoubtedly this is the first adjudication upon this question. The court reads into the contract an implied term that the ticket would be used within a reasonable time, and says that it occupied a position analogous to that of a demand note, upon which, in Texas, the statute runs from date of issue. *Kampman v. Williams*, 70 Tex. 568. The same court formerly held in *R. Co. v. Dennis*, 4 Tex. Civ. App. 90, that a passenger presenting a ticket limited as to time could not be lawfully expelled from the train, though the time limit had expired; but this decision is an anomaly. *McGhee v. Drisdale*, 111 Ala. 597; *Hill v. R. Co.*, 63 N. Y. 101; *Grogan v. R. Co.*, 39 W. Va. 415. Where, however, there are restrictions as to the use of a ticket which do not appear upon its face, and which are not communicated to the passenger, he cannot be expelled. *Maroney v. R. Co.*, 106 Mass. 153.

CONSTITUTIONAL LAW—EQUAL PROTECTION—FISH AND GAME LEGISLATION —NONRESIDENT LANDOWNERS.—STATE V. MALLORY, 83 S. W. 955 (ARK.).—*Held*, that an act declaring it unlawful for any non-resident to hunt or fish at any season of the year is unconstitutional as denying the equal protection of the law in so far as it prevents the same enjoyment of his property right by a non-resident landowner as is afforded a resident landowner. Hill, C. J., and Battle, J., *dissenting*.

The constitutionality of the statute turned upon the question of the ownership of game as between the state and the individual. That the state has the authority to control fishing in navigable waters is well settled. *Preble v. Brown*, 47 Me. 286; *Manchester v. Mass.* 139 U. S. 24. Furthermore, it has been held that an act prohibiting the shipment of game out of the state is constitutional. *State v. Express Co.*, 58 Minn. 403. *Magner v. People*, 97 Ill. 320, goes so far as to declare that ownership of wild animals is in the people of the state, and no one has a property right in them. *Sterling v. Jackson*, 69 Mich. 488, and *State v. Rodman*, 58 Minn. 393, sustain the same opinion. Cooley, on the contrary, states that the right to take fish in the fresh water streams of the country belongs to the owner of the soil under them, to the exclusion of the public. *Cooley on Torts*, 329. *Wickham v. Hawker*, 7 Mees. & W. 63, holds fish and game to be the property of the landowner. Likewise, in many of the states the right to fish and take fish is held to be a right of profit in lands. *Cobb v. Davenport*, 33 N. J. 223; *Adams v. Pease*, 2 Conn. 481.

CONSTITUTIONAL LAW—INFRINGEMENT ON JUDICIARY—REGULATIONS OF TRIAL.—RIGLANDER V. STAR CO., 90 N. Y. SUPP. 772.—A statute provided that if a case was entitled to preference, in order of trial, the Court "must designate a day during the term" at which the application was made, "on which day the cause shall be heard, and, if there be two or more causes so designated for the same day, the said causes shall be heard in order of their date of issue." *Held*, that the statute was unconstitutional, as depriving the judiciary of the right to hear preferred cases according to the circumstances of each particular case. Laughlin, J., *dissenting*.

There is nothing in the Federal constitution which forbids a state legislature from interfering with state judiciary. *Satterlee v. Matthewson*, 27 U. S. 38; *Hartshorne v. Sleght*, 3 John. 554. The legislature, in undertaking to regulate rules of pleading, does not usurp judicial functions. *Whiting*